THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No.26012 of 1998

Dated 27.06.2007

Between:

R. Rami Reddy S/o Venkata Reddy

… **PETITIONER**

And:

The Deputy Commissioner of Prohibition & Excise, Guntur and another.

… **RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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ORDER:

Petitioner claims to be owner of car being No.AAK-T-5032. He allegedly engaged the said vehicle for transportation of daily newspapers from Eenadu press at Vijayawada to Chirala. While so, on 12.08.1995 when the vehicle was proceeding to Vijayawada to pick up the load, one person with a suitcase and zip bag boarded the car and when the vehicle reached Krishnaveni Hotel on National High way-5, the Excise Officials stopped the vehicle and on search, they found 14 and 10 liquor bottles in the suitcase and zip bag, respectively. But, petitioner alleges that the driver of the car has no knowledge about the liquor being carried by the passenger. Thereafter, the Excise Officials arrested the driver of the car and the passenger and seized the liquor bottles and also the car. Later, petitioner filed W.P.No.19034 of 1995 seeking interim custody of the vehicle, and this Court disposed of the writ petition directing release of the vehicle on condition of the petitioner furnishing bank guarantee, and accordingly petitioner also furnished bank guarantee.

Now the grievance of the petitioner is that the first respondent issued a show cause notice asking him to explain as to why the vehicle in question shall not be confiscated and the petitioner also submitted his explanation. However, without considering the same, the first respondent ordered for confiscation of the vehicle in question, by an order dated 28.11.1997. On appeal being filed by the petitioner, the second respondent also confirmed the order of the first respondent,

without application of mind. Hence, this writ petition seeking to set aside the orders of respondents 1 and 2 and to release the vehicle in question in favour of the petitioner.

A detailed counter-affidavit is filed on behalf of the respondents. It is stated, *inter alia*, in the counter-affidavit that the explanation of the petitioner was not considered as the vehicle in question was utilized for transportation of intoxicants unauthorizedly, which is an offence, and accordingly the first respondent ordered for confiscation of vehicle in question along with contraband, and the second respondent also confirmed the same. Therefore, there is no illegality in the impugned orders warranting interference by this Court.

Heard the learned counsel for the petitioner, the learned Government Pleader for Prohibition and Excise and perused the material placed on record.

From a perusal of the order passed by the first respondent-Deputy Commissioner of Prohibition and Excise, it is clear that he did not attribute knowledge about the illegal transportation of the contraband to the petitioner who is the owner of the vehicle in question. No doubt, the quantity involved in the offence is huge and the same is illegal transportation, but when once it is established that neither the owner nor the driver of the vehicle have knowledge about the illicit transportation of the liquor, the vehicle belonging to him cannot be seized or confiscated. On this aspect, a Full Bench of this Court, in W.P.No.157 of 2000 dated 11.7.2002, took a view that knowledge of owner about the contraband transported by his driver is more important.

In the light of the above discussion, this Court is of the view that the crime vehicle, which was seized by the first respondent, cannot be confiscated to State.

In the result, this writ petition is allowed setting aside the orders of respondents 1 and 2 dated 28.11.1997 and 31.03.1998, respectively. The car of the petitioner bearing No.AAK-T-5032 is hereby ordered to be released in favour of the petitioner. Inasmuch as this Court, while issuing rule nisi on 16.09.1998, ordered release of vehicle on condition that the petitioner furnishes bank guarantee for the full value of the vehicle in question, as assessed by the local motor vehicle inspector, the bank guarantee furnished by the petitioner is ordered to be returned to him and it is open to him to encash the same. No costs.

_____ 27.06.2007

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